

The House Committee on Judiciary offers the following substitute to SB 38:

A BILL TO BE ENTITLED
AN ACT

To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to exclude certain types of filings from the electronic filing requirements of superior and state courts; to provide that fees for electronic filings shall not be charged for pleadings or documents filed by certain entities and persons acting in certain capacities or for the filing of leaves of absence and conflict notices; to provide that certain postjudgment proceedings shall be given a new case number for improved record keeping; to revise a definition; to amend Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to commencement of action and service, so as to revise provisions regarding the electronic service of pleadings; to amend Article 7 of Chapter 10 of Title 9 and Article 2 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, relating to continuances relative to civil practice and procedure and continuances relative to trial, respectively, so as to provide for and revise the granting of continuances and stays in civil and criminal cases at certain times and intervals for members and certain staff of the General Assembly for purposes of fulfilling their responsibilities to the General Assembly; to revise continuances for members of the Board of Regents and the Attorney General; to provide for related matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising paragraphs (2) and (3) of subsection (b) of Code Section 15-6-11, relating to electronic filings of pleadings and documents in superior court, electronic payments and remittances, access, and public disclosure, as follows:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a court's electronic filing service provider may charge a fee which shall be a recoverable court cost and only include a:

(i) One-time fee for electronically filing pleadings or documents in a civil action and the electronic service of pleadings, regardless of how many parties shall be served, which shall not exceed \$30.00 per filer, per party. Such fee shall be paid at the time of the first filing on behalf of a party; provided that when filings are submitted via a public access terminal, upon the first filing not using such terminal, such fee shall be paid;

(ii) Supplemental fee of \$5.00 for each filing made in a civil action after a party has made ten electronic filings in such civil action; and

(iii) Convenience fee for credit card and bank drafting services, which shall not exceed 3.5 percent plus a 30¢ payment services fee per transaction.

(B) No electronic filing service provider shall charge a fee pursuant to this paragraph for the filing of:

(i) Pleadings or documents filed by the Department of Law, the Office of Legislative Counsel, the Office of the Secretary of State, a district attorney in his or her official capacity, or a public defender in his or her official capacity;

(ii) Pleadings or documents filed on behalf of municipal corporations or county governments; or

(iii) Leave of absence or conflict notices filed pursuant to the Uniform Rules for the Superior Courts.

~~(B)~~(C) With respect to the fee charged pursuant to division (i) of subparagraph (A) of this paragraph, the clerk of superior court shall retain \$2.00 of the transaction fee and remit it to the governing authority of the county. No other portion of the transaction fee shall be remitted to any other office or entity of the state or governing authority of a county or municipality.

~~(C)~~(D) An attorney, or party if he or she is pro se, shall be allowed unlimited access to view and download any pleading or document electronically filed in connection to the civil action in which he or she is counsel of record or pro se litigant, and an electronic service provider shall not be authorized to charge or collect a fee for such viewing or downloading.

(3)~~(A)~~ This subsection shall not apply to filings:

~~(i)(A) In connection with a pauper's affidavit, any validation of bonds as otherwise provided for by law, pleadings;~~

(i) A pauper's affidavit;

(ii) Any validation of bonds as otherwise provided for by law;

(iii) Pleadings or documents filed under seal or presented to a court in camera or ex parte, ~~or pleadings, or~~

(iv) Pleadings or documents to which access is otherwise restricted by law or court order;

~~(ii)(B)~~ Made physically at the courthouse by an attorney or his or her designee or an individual who is not an attorney; provided, however, that the clerk shall require such pleadings or documents made physically at the courthouse by an attorney or his or her designee be submitted via a public access terminal in the clerk's office. The clerk shall not charge the fee as set forth in division (2)(A)(i) of this subsection for such filing but when payment is submitted by credit card or bank draft, the clerk may charge the convenience fee as set forth in division ~~(2)(A)(ii)~~ (2)(A)(iii) of this subsection;

~~(iii)(C)~~ Made in a court located in an area that has been declared to be in a state of emergency pursuant to Article 3 of Chapter 3 of Title 38. The Judicial Council of Georgia shall provide rules for filings in such circumstances; or

~~(iv)(D)~~ Made prior to the commencement of mandatory electronic filing for such court, wherein the filer shall continue to pay fees applicable to the case on the date of the first filing; provided, however, that a party may elect to make future filings through the court's electronic filing service provider and pay the applicable fees.

~~(B) This subsection may have an effective date between July 1, 2018, and December 31, 2018, when by court rule or standing order, the court commences mandatory electronic filing prior to January 1, 2019."~~

SECTION 1-2.

Said title is further amended by revising subparagraph (a)(4)(A) of Code Section 15-6-61, relating to duties of superior court clerks generally and computerized record-keeping system, as follows:

"(A) An automated civil case management system which shall contain separate case number entries for all civil actions filed in the office of the clerk, including complaints, proceedings, Uniform Interstate Family Support Act actions, domestic relations, contempt actions, motions and modifications on closed civil actions, any postjudgment proceeding filed more than 30 days after judgment or dismissal in an action, and all other actions civil in nature except adoptions;"

SECTION 1-3.

Said title is further amended by revising paragraph (1) of subsection (e) of Code Section 15-6-77, relating to fees and construction of other fee provisions, as follows:

"(1) As used in this subsection, the term 'civil cases' shall include all actions, cases, proceedings, motions, or filings civil in nature, including but not limited to actions for divorce, domestic relations actions, modifications on closed civil cases, adoptions, condemnation actions, and actions for the validation and confirmation of revenue bonds. Any postjudgment proceeding filed more than 30 days after judgment or dismissal in an action shall be considered as a new case for the purposes of this Code section and shall be given a new case number by the clerk of the superior court; provided, however, that such new case number shall not subject a party to any fee other than provided for in this Code section."

SECTION 1-4.

Said title is further amended by revising paragraphs (2) and (3) of subsection (b) of Code Section 15-7-5, relating to electronic filings of pleadings and documents in state court, electronic payments and remittances, access, and public disclosure, as follows:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a court's electronic filing service provider may charge a fee which shall be a recoverable court cost and only include a:

(i) One-time fee for electronically filing pleadings or documents in a civil action and the electronic service of pleadings, regardless of how many parties shall be served, which shall not exceed \$30.00 per filer, per party. Such fee shall be paid at the time of the first filing on behalf of a party; provided that when filings are submitted via a public access terminal, upon the first filing not using such terminal, such fee shall be paid;

(ii) Supplemental fee of \$5.00 for each filing made in a civil action after a party has made ten electronic filings in such civil action; and

(iii) Convenience fee for credit card and bank drafting services, which shall not exceed 3.5 percent plus a 30¢ payment services fee per transaction.

(B) No electronic filing service provider shall charge a fee pursuant to this paragraph for the filing of:

(i) Pleadings or documents filed by the Department of Law, the Office of Legislative Counsel, the Office of the Secretary of State, a solicitor-general in his or her official capacity, or a public defender in his or her official capacity;

(ii) Pleadings or documents filed on behalf of municipal corporations or county governments; or

(iii) Leave of absence or conflict notices filed pursuant to the Uniform Rules for the State Courts.

~~(B)~~(C) With respect to the fee charged pursuant to division (i) of subparagraph (A) of this paragraph, the clerk of state court shall retain \$2.00 of the transaction fee and remit it to the governing authority of the county. No other portion of the transaction fee shall be remitted to any other office or entity of the state or governing authority of a county or municipality.

~~(C)~~(D) An attorney, or party if he or she is pro se, shall be allowed unlimited access to view and download any pleading or document electronically filed in connection to the civil action in which he or she is counsel of record or pro se litigant, and an electronic service provider shall not be authorized to charge or collect a fee for such viewing or downloading.

(3)~~(A)~~ This subsection shall not apply to filings:

~~(i)~~(A) In connection with ~~a pauper's affidavit, pleadings;~~

(i) A pauper's affidavit;

(ii) Pleadings or documents filed under seal or presented to a court in camera or ex parte, ~~or pleadings; or~~

(iii) Pleadings or documents to which access is otherwise restricted by law or court order;

~~(ii)~~(B) Made physically at the courthouse by an attorney or his or her designee or an individual who is not an attorney; provided, however, that the clerk shall require such pleadings or documents made physically at the courthouse by an attorney or his or her designee be submitted via a public access terminal in the clerk's office. The clerk shall not charge the fee as set forth in division (2)(A)(i) of this subsection for such filing but when payment is submitted by credit card or bank draft, the clerk may charge the convenience fee as set forth in division ~~(2)(A)(ii)~~ (2)(A)(iii) of this subsection;

~~(iii)~~(C) Made in a court located in an area that has been declared to be in a state of emergency pursuant to Article 3 of Chapter 3 of Title 38. The Judicial Council of Georgia shall provide rules for filings in such circumstances; or

~~(iv)~~(D) Made prior to the commencement of mandatory electronic filing for such court, wherein the filer shall continue to pay fees applicable to the case on the date of the first filing; provided, however, that a party may elect to make future filings through the court's electronic filing service provider and pay the applicable fees.

~~(B) This subsection may have an effective date between July 1, 2018, and December 31, 2018, when by court rule or standing order, the court commences mandatory electronic filing prior to January 1, 2019."~~

164 **PART II**

165 **SECTION 2-1.**

166 Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
167 commencement of action and service, is amended by revising subsection (f) of Code Section
168 9-11-5, relating to service and filing of pleadings subsequent to the original complaint and
169 other papers, as follows:

170 **"(f) Electronic service of pleadings.**

171 (1) A person to be served may consent to being served with pleadings electronically by:

172 (A) Filing a notice of consent to electronic service and including the person to be
173 served's e-mail address or addresses in such pleading; or

174 (B) Including the person to be served's e-mail address or addresses in or below the
175 signature block of the complaint or answer, as applicable to the person to be served.

176 (2) A person ~~to be served~~ who is not an attorney may rescind his or her election to be
177 served with pleadings electronically by filing and serving a notice of such rescission.

178 (3) If a person to be served agrees to electronic service of pleadings, such person to be
179 served bears the responsibility of providing notice of any change in his or her e-mail
180 address or addresses.

181 (4) When an attorney files a pleading in a case via an electronic filing service provider,
182 such attorney shall be deemed to have consented to be served electronically with future
183 pleadings for such case ~~unless he or she files a rescission of consent as set forth in~~
184 paragraph (2) of this subsection at the primary email address on record with the electronic
185 filing service provider. An attorney may not rescind his or her election to be served with
186 pleadings electronically in cases that were initiated using an electronic filing service
187 provider.

188 (5) If electronic service of a pleading is made upon a person to be served, and such
189 person certifies to the court under oath that he or she did not receive such pleading, it
190 shall be presumed that such pleading was not received unless the serving party disputes
191 the assertion of nonservice, in which case the court shall decide the issue of service of
192 such pleading."

193 **PART III**

194 **SECTION 3-1.**

195 Article 7 of Chapter 10 of Title 9 of the Official Code of Georgia Annotated, relating to
196 continuances relative to civil practice and procedure, is amended by revising Code Section

9-10-150, relating to grounds for continuance – attendance of party or attorney in General Assembly, as follows:

"9-10-150.

(a) A member of the General Assembly who is a party to or the attorney for a party to a case; ~~or; any member of the Office of Legislative Counsel, including the legislative counsel and persons provided for under subsection (d) of Code Section 28-4-3, appearing on behalf of the General Assembly in a case; or any member of the staff of the Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Speaker Pro Tempore of the House of Representatives, or the chairperson of the Judiciary Committee or Special Judiciary Committee of the Senate or of the Judiciary Committee or Judiciary, Non-civil Committee of the House of Representatives who is the lead counsel for a party to a case pending in any trial or appellate court or before any administrative agency of this state, shall be granted a continuance and stay of the case. The continuance and stay shall apply to all aspects of the case, including, but not limited to, the filing and serving of an answer to a complaint, the making of any discovery or motion, or of any response to any subpoena, discovery, or motion, and appearance at any hearing, trial, or argument. Unless a shorter length of time is requested by the member, the continuance and stay shall last for the seven days prior to the regular or extraordinary session of the General Assembly; the length of any regular or extraordinary session of the General Assembly; and during the first three weeks following any recess or adjournment, including an adjournment sine die of any regular or extraordinary session; and the entirety of any day during the calendar year on which a legislative committee for which the member serves or is staff holds a scheduled meeting. A continuance and stay shall also be granted for such other times as the member of the General Assembly or staff member certifies to the court that his or her presence elsewhere is required by his or her duties with the General Assembly.~~ Notwithstanding any other provision of law, rule of court, or administrative rule or regulation, the time for doing any act in the case which is delayed by the continuance provided by this Code section shall be automatically extended by the same length of time as the continuance or stay covered.

(b)(1) For such other times not provided for in subsection (a) of this Code section, a member of the General Assembly who is a party to a case or the lead counsel for a party to a case may request a continuance or stay as the member of the General Assembly certifies to the court that his or her presence elsewhere is required by his or her duties with the General Assembly. The certification by the member of the General Assembly shall be in writing and shall state with particularity the nature of the General Assembly duties that require the continuance or stay. Opposing counsel, a party to the case, or the court on its own motion shall have ten days from receipt of the request for a continuance

or stay to object to the request by stating with particularity the grounds upon which it is determined that such stay or continuance will cause significant harm to the rights of a party or would otherwise be detrimental to the interest of justice. The court upon receipt of the objection, or on its own motion, shall consider the following in determining whether to grant or deny the continuance or stay:

(A) The length of time that the case has been pending;

(B) The length of delay that such stay or continuance will cause in the resolution of the case;

(C) The nature of the General Assembly duties that require the continuance or stay; and

(D) Such other factors that the court determines to be relevant in determining the harm to the rights of the parties or the interest of justice in the granting or denial of the request for a continuance or stay.

(2) Absent a ruling by the court denying the continuance or stay certified by the member under paragraph (1) of this subsection, such continuance or stay shall be considered granted as a matter of law."

SECTION 3-2.

Said article is further amended by revising Code Section 9-10-151, relating to grounds for continuance of a member of the Board of Regents, as follows:

"9-10-151.

Should any member of the Board of Regents of the University System of Georgia or any member of the State Board of Education be ~~engaged~~ otherwise occupied, at the time of any meeting of the board, as counsel or party in any case pending in the courts of this state and should the case be called for trial during the regular session of the board, the absence of the member to attend the session shall be good ground for a postponement or continuance of the case until the session of the board has come to an end."

SECTION 3-3.

Article 2 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, relating to continuances relative to trial, is amended by revising Code Section 17-8-26, relating to grounds for granting continuances – party or party's attorney in attendance at General Assembly, as follows:

"17-8-26.

(a) A member of the General Assembly who is a party to or the attorney for a party to a case; any member of the Office of Legislative Counsel, including the legislative counsel and persons provided for under subsection (d) of Code Section 28-4-3, appearing on behalf of the General Assembly in a case; or any member of the staff of the Lieutenant Governor,

the Speaker of the House of Representatives, or the chairperson of the Judiciary Committee or Special Judiciary Committee of the Senate or of the Judiciary Committee or Judiciary, Non-civil Committee of the House of Representatives who is the lead counsel for a party to a case ~~which is~~ pending in any trial or appellate court or before any administrative agency of this state shall be granted a continuance and stay of the case. The continuance and stay shall apply to all aspects of the case, including, but not limited to, the filing and serving of an answer to a complaint, the making of any discovery or motion, or of any response to any subpoena, discovery, or motion, and appearance at any hearing, ~~pretrial appearance, arraignment, plea or motion calendar, trial, or argument. When a case, motion, hearing, or argument is called and is subject to a continuance or stay under this Code section due to the party's attorney's membership in the General Assembly, the party shall not be required to be present at the call of the case, motion, hearing, or argument.~~ Unless a shorter length of time is requested by the member, the continuance and stay shall last for the seven days prior to the regular or extraordinary session of the General Assembly; the length of any regular or extraordinary session of the General Assembly; and during the first three weeks following any recess or adjournment, including an adjournment sine die of any regular or extraordinary session; and the entirety of any day during the calendar year on which a legislative committee for which the member serves or is staff holds a scheduled meeting. Notwithstanding any other provision of law, rule of court, or administrative rule or regulation, and to the extent permitted by the Constitutions of the United States and of the State of Georgia, the time for doing any act in the case which is delayed by the continuance or stay provided by this Code section shall be automatically extended by the same length of time as the continuance or stay covered.

(b)(1) For such other times not provided for in subsection (a) of this Code section, a member of the General Assembly who is a party to a case or the lead counsel for a party to a case may request a A continuance and stay ~~shall also be granted~~ for such other times as the member of the General Assembly or staff member certifies to the court that his or her presence elsewhere is required by his or her duties with the General Assembly. The certification by the member of the General Assembly shall be in writing and shall state with particularity the nature of the General Assembly duties that require the continuance or stay. Opposing counsel, any person who is alleged in the case by the state to be a victim, or the court on its own motion shall have ten days from receipt of the request for a continuance or stay to object to the request by stating with particularity the grounds upon which it is determined that such stay or continuance will cause significant harm to the rights of a party or would otherwise be detrimental to the interest of justice. The court upon receipt of the objection, or on its own motion, shall consider the following in determining whether to grant or deny the continuance or stay:

(A) The length of time that the case has been pending;

(B) The length of delay that such stay or continuance will cause in the resolution of the case;

(C) The nature of the General Assembly duties that require the continuance or stay; and

(D) Such other factors that the court determines to be relevant in determining the harm to the rights of the parties or the interest of justice in the granting or denial of the request for a continuance or stay.

(2) Absent a ruling by the court denying the continuance or stay certified by the member under paragraph (1) of this subsection, such continuance or stay shall be considered granted as a matter of law."

SECTION 3-4.

Said article is further amended by revising Code Section 17-8-27, relating to grounds for granting of continuances to the Attorney General, as follows:

"17-8-27.

When any case pending in the courts of this state in which the Attorney General is of counsel is scheduled to be called for any ~~purpose~~ reason during sessions of the General Assembly or during a period of 15 days preceding or following sessions of the General Assembly, on motion of the Attorney General or an assistant attorney general, it shall be a good ground for continuance that the Attorney General and his staff are occupied in aid of the business of the General Assembly."

PART IV

SECTION 4-1.

Part III of this Act shall apply to all civil and criminal cases, including, but not limited to, any case currently initiated within any court in this state.

SECTION 4-2.

All laws and parts of laws in conflict with this Act are repealed.